FILED
DEC - 7 1993
OFFICE OF THE CLERK

No. 93-726

In The

Supreme Court of the United States

October Term, 1993

OMAR ZAKI GHOBASHY,

Petitioner,

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE,

Respondent.

On Petition for Writ of Certiorari to The New York Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

HAL R. LIEBERMAN
Chief Counsel
Departmental Disciplinary Committee for the First Judicial Department
Attorney for Respondent
41 Madison Avenue
New York, New York 10010
(212)685-1000

MADY J. EDELSTEIN*
of Counsel

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTION PRESENTED

It is not an error for the New York State Court of Appeals to decide that the order of the Appellate Division, First Department disbarring the applicant and removing his name from list of attorneys admitted to practice law in the State of New York, is not a final order from which an Appeal may [be] heard by the Court of Appeals?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTRODUCTION 1

REASONS FOR DENYING THE WRIT 4

A. The Court of Appeals properly denied Petitioner's motion on the merits and properly declined to review the Appellate Division's April 27, 1993 decision 4

B. Petitioner's due process claims present no basis for review by this Court 6

1. Petitioner's quorum argument does not invalidate Petitioner's disbarment or merit review by this Court 7

2. Petitioner's failure to submit evidence of his alleged medical disability did not deprive him of due process 9

3. Justice Murphy's participation in the proceedings below was entirely proper 10

4. The Hearing Panel was properly constituted .. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page

CASES

Cora v. Branciforte, 78 N.Y.2d 940 (1991) 5

Ex parte Young, 284 A.D. 499, 500 (1st Dep't 1954) 9

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) 12

In re Axtell, 257 N.Y. 210 (1931) 5

In re Goodman, 199 N.Y. 143 (1910) 5

Kelly v. Greason, 23 N.Y.2d 368, 383-384 (1968) 9

Matter of Chervin, 181 A.D.2d 111 (1st Dep't 1992) 11

Matter of Freymann v. Board of Regents of the State of New York, 102 A.D.2d 912 (3rd Dep't 1984), *app. dism.* 64 N.Y.2d 645 (1984) 9

Matter of Glotzer, 191 A.D.2d 112 (1st Dep't 1993) 11

Matter of Knobel, 5 N.Y.2d 944 (1959) 5

Matter of Levine, 101 A.D.2d 49 (1st Dep't 1984) 10

Matter of Mitchell, 40 N.Y.2d 153, 156 (1976) 12

Matter of Ruffalo, 390 U.S. 544 (1967) 7

Matter of Strier, 190 A.D.2d 140 (1st Dep't 1993) 11

U.S. v. Strickland, 466 U.S. 668, 686 (1984) 9

STATUTES AND COURT RULES

Rules of the Supreme Court, Appellate Division, First Judicial Department

22 N.Y.C.R.R. §603.1 *et seq* 7

TABLE OF AUTHORITIES – Continued

Page

22 N.Y.C.R.R. §603.4(a)(1) 11

22 N.Y.C.R.R. §603.4(a)(2) 11

22 N.Y.C.R.R. §605.1 *et seq* 7

22 N.Y.C.R.R. §605.1(b) 8

22 N.Y.C.R.R. §605.22(c) 7

Civil Practice Law and Rules §§ 5601, 5602 5

Civil Practice Law and Rules §5611 5

Judiciary Law §90(2) 4

N.Y. Constitution, Article 6 §3 5

Rules of the Supreme Court of the United States, Rule 10 4

INDEX OF APPENDICES

APPENDIX A

Judiciary Law §90(2) A1

APPENDIX B

Civil Practice Law and Rules §5601 and §5602 ..... A3

APPENDIX C

Civil Practice Law and Rules §5611 ..... A7

APPENDIX D

New York Constitution, Article 6 §3 ..... A8

APPENDIX E

First Amended Statement of Charges A9

TABLE OF AUTHORITIES – Continued

Page

APPENDIX F

Rules of the Supreme Court, Appellate Division, First Judicial Department §605.22(c) A29

APPENDIX G

Rules of the Supreme Court, Appellate Division, First Judicial Department §603.4(a)(1) A30

APPENDIX H

Rules of the Supreme Court, Appellate Division, First Judicial Department §603.4(a)(2) A31

No. 93-726

In The

Supreme Court of the United States

October Term, 1993

OMAR ZAKI GHOBASHY,

Petitioner,

v.

DEPARTMENTAL DISCIPLINARY COMMITTEE,

Respondent.

On Petition for Writ of Certiorari to
The New York Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

INTRODUCTION

On January 14, 1993, the Appellate Division for the First Judicial Department of New York State issued a unanimous decision disbarring Petitioner, Omar Z. Ghobashy ("Petitioner"). The Court's decision confirmed the Report of a disciplinary Hearing Panel which, after several days of hearings, unanimously sustained eleven charges of serious professional misconduct and recommended disbarment. In upholding the Hearing Panel Report, the Court found that Petitioner wrongfully revealed client confidences and secrets; intentionally prejudiced or damaged clients; made false and misleading

threats to clients; failed to withdraw from representation after being discharged; falsely and recklessly affirmed matters to the courts; neglected client matters; failed to cooperate with successor counsel; and, engaged in an impermissible conflict of interest by taking a position in a litigated matter that was adverse to his former client.

In disbarring Petitioner, the Appellate Division noted that Petitioner's " . . . persistent denials of wrongdoing indicate that he fails to understand that his conduct violated the Code of Professional Responsibility." (Petitioner's Appendix A at A28) The Appellate Division also found that Petitioner offered no mitigation and was not candid with the Hearing Panel.

The disciplinary hearing took place over the course of three days. Six witnesses appeared for the Committee; six witnesses, including Petitioner who testified on his own behalf, appeared for Petitioner. Petitioner was represented by counsel throughout the hearing. Both Petitioner and the Committee placed documents in evidence. The Panel cited Petitioner's pattern of professional misconduct by making deliberately or recklessly false or unsubstantiated prejudicial statements about his clients to the U.S. Immigration and Naturalization Service ("INS"); to a foreign government; to their employers; and to their new attorneys, their spouses and others.[1] The Panel concluded

---

[1] Attached to the Hearing Panel Report are several letters written by Petitioner. These letters include Petitioner's letters to his clients threatening them with criminal prosecution, falsely asserting that they cannot discharge him as their attorney, and accusing their new lawyers of acting illegally and incompetently. Other attachments are Petitioner's letter to INS request-

that Petitioner " . . . showed no awareness of the most basic norms of professional conduct . . . " and that "Petitioner is a danger to the public; he is a potential source of harm to persons who retain him."

Petitioner has been denied permission to appeal the disbarment order to the Court of Appeals of New York State twice. On April 27, 1993 the Appellate Division denied Petitioner's first application for a stay and for leave to appeal. On July 9, 1993, the New York Court of Appeals denied Petitioner's second motion for a stay and for leave to appeal.

In presenting the question for review by this Court, Petitioner claims that the Court of Appeals erred in denying his motion for a stay and for leave to appeal by holding that the Appellate Division's order of disbarment was not final and therefore not appealable. This claim mischaracterizes the Court of Appeals' decision. In fact, the Court of Appeals denied Petitioner's motion in its entirety and on the merits; and there is no basis for this Court to grant certiorari on this point.

Petitioner's also claims that the Appellate Division denied him due process. This claim is also groundless and in large measure has already been subject to State court review. Petitioner seeks a remedy from this Court, namely a reduction in the sanction imposed, which is solely within the province of the Appellate Division.

---

ing that deportation proceedings be commenced against his clients and Petitioner's letter to a foreign embassy accusing a client of bigamy and draft evasion, and presenting forged documents, and requesting that his client's passport be forfeited.

There are no special or important reasons for granting review of this matter, as required by Rule 10 of the Rules of this Court. As no substantial constitutional question is presented, the writ should be denied.

REASONS FOR DENYING THE WRIT

A. The Court of Appeals properly denied Petitioner's motion on the merits and properly declined to review the Appellate Division's April 27, 1993 decision.

The Court of Appeals denied Petitioner's motion for a stay and leave to appeal the disbarment order in its entirety. The Court of Appeals also determined that the Appellate Division's April 27, 1993 decision was not final and therefore not appealable. Indeed, the decision specifically states that Petitioner's motion " . . . *insofar as it seeks leave to appeal from the April 27, 1993 Appellate Division order*, be and the same is hereby dismissed upon the ground that that order does not finally determine the proceeding within the meaning of the [New York State] Constitution . . . " [emphasis added] As shown below, the Court of Appeals' decision to deny permission to appeal was within its discretion and proper in all respects.

Under the New York statutory scheme, the Appellate Division is granted exclusive power to remove from office any attorney who is guilty of professional misconduct.[2] It has long been held that the power and discretion of the Appellate Division in deciding sanction when guilt

[2] Judiciary Law §90(2) is contained in Appendix A.

is established is not subject to review by the Court of Appeals. *In re Axtell*, 257 N.Y. 210 (1931); *In re Goodman*, 199 N.Y. 143 (1910). Permission to appeal to the Court of Appeals, as opposed to an appeal as of right, is discretionary and may be granted by either the Appellate Division or the Court of Appeals.[3]

Petitioner argues that the Court of Appeals erred by holding that the Appellate Division's ruling was not final. But, pursuant to New York Civil Practice Law and Rules, an Appellate Division order is final only if it disposes of all the issues in an action. A subsequent appeal may be taken only from this final order, and not from any additional orders entered pursuant to it.[4] Thus, the Appellate Division's disbarment order was potentially appealable by permission, but not its April 1993 order denying leave to appeal to the Court of Appeals. This is precisely what the Court of Appeals ruled in its July 9, 1993 decision.

The result here is far from unique: Appellate Division orders denying leave to appeal to the Court of Appeals are consistently denied by the Court of Appeals on the ground that such orders do not finally determine the action within the meaning of the New York State Constitution.[5] *See*, for example, *Cora v. Branciforte*, 78 N.Y.2d 940 (1991); *Matter of Knobel*, 5 N.Y.2d 944 (1959).

---

[3] C.P.L.R. §5601 and §5602 (Appendix B)

[4] C.P.L.R. §5611 (Appendix C)

[5] New York Constitution, Article 6 §3 (Appendix D)

B. Petitioner's due process claims present no basis for review by this Court.

Petitioner was served with a detailed Statement of Charges well in advance of the hearing, setting forth the factual basis for the allegations of misconduct and stating which disciplinary rules were violated. A copy of the First Amended Statement of Charges is contained in Appendix E. Petitioner submitted an answer denying these charges, and raising certain defenses. A full evidentiary hearing was held in three sessions attended by Petitioner and his counsel. Petitioner was represented by counsel at the investigatory stage, throughout the hearing, and in each of his applications for review by the Appellate Division and the Court of Appeals.

Petitioner complains that he was not permitted to confront his accusers and that certain witnesses were prevented from appearing. On the contrary, Petitioner cross examined each of the Committee's witnesses and no witnesses were prevented from appearing. Moreover, in addition to the witnesses who appeared voluntarily on Petitioner's behalf, Petitioner had the right to ask the Court to issue a subpoena for others. Indeed, he exercised that right by compelling the appearance of the wife of one of the complainants (who testified and produced documents as requested by Petitioner) and by subpoenaing documents from a witness called by the Committee.

Petitioner repeats certain arguments regarding the procedures of the Hearing Panel which were made in the course of his motion to disaffirm the Hearing Panel Report, and subsequent motions. He also raises certain issues here for the first time. However, Petitioner had

notice of the charges against him and a full opportunity to be heard as required by due process. *Matter of Ruffalo*, 390 U.S. 544 (1967). As shown below, Petitioner's claims are baseless and do not merit review by this Court.

1. Petitioner's quorum argument does not invalidate Petitioner's disbarment or merit review by this Court.

Petitioner repeats the argument that there was no quorum at the disciplinary hearing. The applicable quorum rule is set forth in 22 N.Y.C.R.R. §605.22(c).[6] Under it a determination of a Hearing Panel must be by a vote of not less than three Panel members, of whom at least two shall have heard the entire proceeding, and the other shall have either heard the proceeding or read the transcript of that portion not heard. Petitioner opines that the

---

[6] The rules governing disciplinary procedures of the Supreme Court Appellate Division, First Judicial Department are codified at 22 N.Y.C.R.R. §§603.1 *et seq.* and 605.1 *et seq.* Section 605.22(c), contained in Appendix F, reads in pertinent part:

> **(c) Quorum and Manner of Acting.** All matters presented to a hearing panel shall be determined by three members of the panel. Two panel members assigned to a matter shall constitute a quorum for the transaction of business. All action shall require the concurrence of at least two members. At least two members of a hearing panel assigned to a matter shall have heard the entire proceeding. The third assigned member either shall have heard the entire proceeding before the hearing panel or shall have read the transcript of that portion (which may be all) of the proceeding not heard. . . .

quorum rule was violated because Panel members *may* have failed to read the hearing transcript. He further argues that one Panel member who was required to be present did not attend part of one of the hearing sessions. Petitioner's arguments were rejected by both courts below, and raise no issue to be reviewed by this Court.

As stated by the Appellate Division in its disbarment order, even if the quorum rule was violated, it constituted a nonprejudicial irregularity which did not affect substantial rights. *See*, 22 N.Y.C.R.R. §605.1(b).[7] As the record states, at least two Panel members were present at each hearing session, and there is no evidence that any Panel member failed to read any part of the transcript. The portion of the hearing for which one member (who Petitioner argues was required to attend) was absent constituted 23 pages of a 506 page hearing transcript; only one of the eleven sustained charges (Charge Ten) is based upon this portion of the hearing.

Petitioner's analogy to criminal procedure and grand jury quorum rules was made to the Appellate Division

---

[7] 22 N.Y.C.R.R. §605.1(b) provides:

(b) These Rules are promulgated for the purpose of assisting the Office of Chief Counsel, the Respondent and the Committee to develop the facts relating to, and to reach a just and proper determination of, matters brought to the attention of the Office of Chief Counsel or the Committee. The Committee will not hold action of a Hearing Panel invalid by reason of any nonprejudicial irregularity. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

and Court of Appeals. Both Courts rejected this argument, as well they should have. A Hearing Panel is not a grand jury. Disciplinary proceedings are not criminal proceedings. *Ex parte Young*, 284 A.D. 499, 500 (1st Dep't 1954); *Kelly v. Greason*, 23 N.Y.2d 368, 383-384 (1968). And, in any event, due process does not require the mechanical application of such quorum rules in an administrative hearing. *See Matter of Freymann v. Board of Regents of the State of New York*, 102 A.D.2d 912 (3rd Dep't 1984), *app. dism.* 64 N.Y.2d 645 (1984).

Petitioner's separate claims that trial counsel was ineffective because he failed to raise the quorum question were likewise rejected by the Appellate Division and the Court of Appeals. Counsel's "failure" to object to a purported lack of quorum is of no moment in light of the Appellate Division's ruling that even if there was a quorum rule violation, it was inconsequential. Trial counsel represented Petitioner competently in all respects: he cross-examined witnesses, he examined witnesses called on Petitioner's behalf, he examined Petitioner, he presented legal arguments, he submitted responsive pleadings and he introduced documentary evidence on Petitioner's behalf at the hearing. Trial counsel's representation clearly met the "reasonable" standard established in *U.S. v. Strickland*, 466 U.S. 668, 686 (1984).

2. Petitioner's failure to submit evidence of his alleged medical disability did not deprive him of due process.

The Appellate Division's order of disbarment ruled on Petitioner's claims regarding his medical condition.

Noting that Petitioner did not offer medical evidence at his disciplinary hearing, despite notice by Committee staff that such evidence could be relevant, the Appellate Division found that Petitioner did not establish that his physical ailments existed at the time of his misconduct or were related to his actions. Petitioner submits to this Court the same (unsworn) affidavits regarding his medical treatment that were submitted in Petitioner's unsuccessful motions to the Appellate Division.

Petitioner's argument that his counsel failed to offer medical evidence in mitigation and that he was therefore deprived of a fair hearing was rejected by the Appellate Division; there is no evidence that Petitioner wished to argue for a suspension based upon a physical disability, despite notice from Committee staff. Petitioner did not present evidence of any disability or to show that any disability was causally linked to his professional misconduct as required by New York law. *See*, for example, *Matter of Levine*, 101 A.D.2d 49 (1st Dep't 1984) Petitioner elected to contest the disciplinary charges on the merits and did not prevail.

3. Justice Murphy's participation in the proceedings below was entirely proper.

Petitioner objects here for the first time to Presiding Justice Murphy's participation in the Appellate Division decisions below. He suggests that Justice Murphy is biased because of his role in appointing disciplinary hearing panels. There is no basis whatsoever for these arguments. Moreover, Justice Murphy does not personally appoint the members of the Committee; the Appellate

Division as a Court does so.[8] Petitioner offers no statutory or case law to support his argument, nor does he attempt to support the insinuation that Justice Murphy did not act impartially in this case. It should be noted that Justice Murphy was joined in the Appellate Division's unanimous decision to disbar and later to deny Petitioner's motion for leave to appeal by four Justices of the Appellate Division. In addition, the Court of Appeals decision denying further review was made by Chief Judge Judith S. Kaye. It may be noted that the Appellate Division does not uniformly confirm Hearing Panel Reports either with regard to findings of fact or sanctions to be imposed.[9]

4. The Hearing Panel was properly constituted.

Petitioner also asks this Court to review his case because, he claims, the Hearing Panel was not properly constituted due to the residence of the Panel Chair. Not only was this issue never raised throughout the proceedings below, it is entirely frivolous. The Court Rules setting forth the procedures of the Departmental Disciplinary Committee expressly state that at least two-thirds of the Committee shall be members of the bar of the State of New York in good standing, each of whom shall reside *or have a principal place of business in the City of New York.*[10] [emphasis added] The Panel Chair, Sheldon

---

[8] 22 N.Y.C.R.R. §603.4(a) (1) (Appendix G)

[9] *See,* for example, *Matter of Chervin,* 181 A.D.2d 111 (1st Dep't 1992); *Matter of Glotzer,* 191 A.D.2d 112 (1st Dep't 1993); *Matter of Strier,* 190 A.D.2d 140 (1st Dep't 1993).

[10] 22 N.Y.C.R.R. §603.4(a) (2) (Appendix H)

H. Elsen, is a partner in the law firm of Orans, Elsen and Lupert in New York City. Thus the Panel's composition fully satisfies the Appellate Division's rules.

CONCLUSION

Petitioner had a full and fair hearing in this matter that comported with due process. He was served with detailed charges setting forth specific conduct which violated specific disciplinary rules of the Lawyer's Code of Professional Responsibility. He had ample opportunity to call witnesses on his own behalf, to cross-examine adverse witnesses, to testify in his own behalf, to offer mitigation evidence, and to argue his defenses, as reflected in the lengthy Hearing Panel Report. Petitioner was represented by counsel at the investigatory stage, at the hearing, and on each post-hearing motion. He was found to have violated the fundamental duty of loyalty to the client. He had his day in court and has been disbarred to protect the public, which is the primary concern of disciplinary matters. *Matter of Mitchell*, 40 N.Y.2d 153, 156 (1976). The New York Courts have reviewed Petitioner's claims thoroughly and properly and rejected them in the State's recognized role of regulating the State bar. *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

As to the question presented, the Court of Appeals properly denied Petitioner's motion for leave to appeal and properly refused to review the April 27, 1993 Appellate Division decision. No substantial constitutional issue

has been raised, and the writ should be denied in all respects.

Dated: New York, New York
December 2, 1993

Respectfully submitted,
HAL R. LIEBERMAN
Chief Counsel
Departmental Disciplinary
Committee for the First
Judicial Department
Attorney for Respondent
41 Madison Avenue
New York, New York 10010
(212) 685-1000

MADY J. EDELSTEIN*
Of Counsel
*Counsel of Record

APPENDIX A

JUDICIARY LAW § 90(2)

§ 90. Admission to and removal from practice by appellate division; character committees

2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice.

It shall be the duty of the appellate division to insert in each order of suspension or removal hereafter rendered a provision which shall command the attorney and counsellor-at-law thereafter to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another. In addition it shall forbid the performance of any of the following acts, to wit:

a. The appearance as an attorney or counsellor-at-law before any court, judge, justice, board, commission or other public authority.

b. The giving to another of an opinion as to the law or its application, or of any advice in relation thereto.

In case of suspension only, the order may limit the command to the period of time within which such suspension shall continue, and if justice so requires may further limit the scope thereof.

If an attorney and counsellor-at-law has been heretofore removed from office, the appellate division shall upon application of any attorney and counsellor-at-law, or of any incorporated bar association, and upon such notice to the respondent as may be required, amend the order of removal by adding thereto as a part thereof, provisions similar to those required to be inserted in orders hereafter made.

If a certified copy of such order or of such amended order, be served upon the attorney and counsellor-at-law suspended or removed from office, a violation thereof may be punished as a contempt of court.

APPENDIX B

New York Civil Practice Law and Rules

ARTICLE 56
APPEALS TO THE COURT OF APPEALS

§ 5601. Appeals to the court of appeals as of right.

(a) Dissent. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division which finally determines the action, where there is a dissent by at least two justices on a question of law in favor of the party taking such appeal.

(b) Constitutional grounds. An appeal may be taken to the court of appeals as of right:

1. from an order of the appellate division which finally determines an action where there is directly involved the construction of the constitution of the state or of the United States; and

2. from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States.

(c) From order granting new trial or hearing, upon stipulation for judgment absolute. An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an

administrative agency, from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

(d) Based upon nonfinal determination of appellate division. An appeal may be taken to the court of appeals as of right from a final judgment entered in a court of original instance, from a final determination of an administrative agency or from a final arbitration award, or from an order of the appellate division which finally determines an appeal from such a judgment or determination, where the appellate division has made an order on a prior appeal in the action which necessarily affects the judgment, determination or award and which satisfies the requirements or subdivision (a) or of paragraph one of subdivision (b) except that of finality.

§ 5602. Appeals to the court of appeals by permission.

(a) Permission of appellate division or court of appeals. An appeal may be taken to the court of appeals by permission of the appellate division granted before application to the court of appeals, or by permission of the court of appeals upon refusal by the appellate division or upon direct application. Permission by an appellate division for leave to appeal shall be pursuant to rules authorized by the appellate division. Permission by the court of appeals for leave to appeal shall be pursuant to rules authorized by the court which shall provide that leave to appeal be granted upon the approval of two judges of the court of appeals. Such appeal may be taken:

1. in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims, an administrative agency or an arbitration,

(i) from an order of the appellate division which finally determines the action and which is not appealable as of right, or

(ii) from a final judgment of such court, final determination of such agency or final arbitration award where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment, determination or award and the final judgment, determination or award is not appealable as of right pursuant to subdivision (d) of section 5601 of this article; and

2. in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, from an order of the appellate division which does not finally determine such proceeding, except that the appellate division shall not grant permission to appeal from an order granting or affirming the granting of a new trial or hearing.

(b) Permission of appellate division. An appeal may be taken to the court of appeals by permission of the appellate division:

1. from an order of the appellate division which does not finally determine an action, except an order

described in paragraph two of subdivision (a) or subparagraph (iii) of paragraph two of subdivision (b) of this section or in subdivision (c) of section 5601;

2. in an action originating in a court other than the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency,

(i) from an order of the appellate division which finally determines the action, and which is not appealable as of right pursuant to paragraph one of subdivision (b) of section 5601, or

(ii) from a final judgment of such court or a final determination of such agency where the appellate division has made an order on a prior appeal in the action which necessarily affects the final judgment or determination and the final judgment or determination is not appealable as of right pursuant to subdivision (d) of section 5601, or

(iii) from an order of the appellate division granting or affirming the granting of a new trial or hearing where the appellant stipulates that, upon affirmance, judgment absolute shall be entered against him.

APPENDIX C

New York Civil Practice Law and Rules

§ 5611. When appellate division order deemed final.

If the appellate division disposes of all the issues in the action its order shall be considered a final one, and a subsequent appeal may be taken only from that order and not from any judgment or order entered pursuant to it. If the aggrieved party is granted leave to replead or to perform some other act which would defeat the finality of the order, it shall not take effect as a final order until the expiration of the time limited for such act without his having performed it.

APPENDIX D

Art. 6, § 3 CONSTITUTION

§ 3. [Jurisdiction of court of appeals]

a. The jurisdiction of the court of appeals shall be limited to the review of questions of law except where the judgment is of death, or where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered; but the right to appeal shall not depend upon the amount involved.

APPENDIX E

BEFORE THE DEPARTMENTAL DISCIPLINARY COMMITTEE OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

----------X

In the Matter of

Omar Z. Ghobashy, Esq.

Respondent.

----------X

FIRST AMENDED STATEMENT OF CHARGES

Preliminary Statement

1. The Departmental Disciplinary Committee for the First Judicial Department ("the Committee") brings this proceeding pursuant to 22 N.Y.C.R.R. §605.12 to discipline Omar Z. Ghobashy ("Ghobashy") for violating Disciplinary Rules 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-110(A)(2) and (B)(4), 4-101(B)(1) and (2), 6-101(A)(3), 7-101(A)(2) and (3), 7-104(A)(1), 7-106(C)(1) and 9-102(B)(4) of the Lawyer's Code of Professional Responsibility before the 1990 Amendments (the "Code") and DR 5-108(A)(1) of the Code after the 1990 Amendments. As more fully set forth below, respondent is guilty of unethical practices and professional misconduct because, inter alia, he threatened his clients and made false and reckless statements to them, he wrongfully revealed confidences or secrets of his clients to their disadvantage, he intentionally prejudiced or damaged clients during the course of representing them, he failed to withdraw from representation after being discharged by his clients, and he failed to return property to his clients.

2. Respondent was admitted to practice as an attorney and counselor-at-law by the Appellate Division of the Supreme Court, Second Judicial Department, in June 1962.

3. Respondent has maintained an office for the practice of law within the First Judicial Department at all times relevant to these charges.

Background Facts

4. As set forth more specifically below, respondent was retained by the five clients named herein, was discharged by them, continued to hold himself out as their lawyer after being discharged, threatened them, failed to cooperate with their new attorneys, interfered with their representation by new counsel, revealed their confidences and secrets, failed to return their property to them, and made false or reckless and prejudicial statements about them and their new attorneys to the INS, to their employers, to their spouses, to the court and to others.

A) Kirsten and Jorge Gallardo

5. In or around August 1987, Kirsten and Jorge Gallardo (the "Gallardos") retained respondent in order to obtain a visa for Jorge Gallardo based upon their marriage. The Gallardos had begun the process by filing an application with the Immigration and Naturalization Service ("INS") pro se. Their application had been denied after they were interviewed about their marriage. The Gallardos had filed an appeal.

6. According to the retainer agreement, the Gallardos were to pay respondent $500.00 in advance and $450.00 when they received an appointment for their interview at the INS, plus filing fees. The Gallardos paid respondent $500.00 upon signing the retainer agreement.

7. Respondent filed a Notice of Entry of Appearance as attorney for the Gallardos with the INS on or about August 3, 1987, after meeting with the Gallardos and taking original personal financial records from them. On August 7, 1987, respondent submitted an affirmation in support of the Gallardos's appeal to the Board of Immigration Appeals in Falls River, Virginia.

8. In or around November 1987, Mrs. Gallardo received a letter from the INS offering the Gallardos a second interview concerning the legitimacy of their marriage. Mrs. Gallardo conveyed this information to respondent and asked respondent to withdraw the appeal and proceed with a second interview. Respondent refused this request and continued with the appeal. As a consequence, as set forth below, the Gallardo's application was not granted until two years later when new counsel advised them to undergo a second interview.

9. Beginning in or about November 1987 and continuing through July 1989, the Gallardos attempted to contact respondent to discuss the progress of their case. Respondent failed to respond to the Gallardos as to the status of their case.

10. The Gallardos made an appointment to meet respondent on or about July 14, 1989 at his office. On that day, Mrs. Gallardo called respondent's office to confirm the appointment. Mrs. Gallardo heard respondent in the

background yelling that he would not see the Gallardos and was informed by respondent's secretary, Kohanya Ranch, that respondent refused to see the Gallardos and that he would call the police if they came to his office.

11. On July 17, 1989, the Gallardos wrote to respondent discharging him and informing him of their new attorney's name and address. They also requested that all of their papers be forwarded to their new attorney. Respondent did not forward the Gallardos' papers or file information despite the Gallardos' request and has not done so to date.

12. Thereafter, on or about August 29, 1989, respondent wrote to the Gallardos stating, inter alia, that their new attorney is incompetent and may damage their case, threatened to sue them for his fee, and predicted that they would fail an interview at the INS.

13. On or about September 13, 1989 respondent wrote to the Gallardos advising them that their new attorney's actions in withdrawal of their appeal might subject them to criminal proceedings and subject Mr. Gallardo to deportation. In this letter respondent also expressed his "horror" at the tactics of his successor attorneys.

14. On or about the same day, September 13, 1989, respondent wrote to Scott Blackman, Acting District Director of the INS, regarding the Gallardos's case. In this letter respondent falsely stated that the Gallardos went to another attorney and were evading the marriage fraud act by withdrawing their appeal. In fact, the Gallardos's application was approved by the INS in November 1989.

B) Samy A. and Giovanna Hassan

15. Samy A. Hassan ("Mr. Hassan") retained respondent in 1984 while he was in this country as a visitor. On January 20, 1987 Mr. Hassan married Giovanna Hassan ("Mrs. Hassan"), who was a permanent U.S. resident. In or about March 1988 the Hassans retained respondent to apply for a visa for Mr. Hassan based upon the marriage.

16. On or about April 4, 1988, respondent filed the required petition with the INS and a received notice of approval which advised respondent that the Hassans' petition had been forwarded to the United States Consulate in Lima, Peru and that respondent would be contacted when Mr. Hassan's turn was reached on the waiting list for an interview.

17. Thereafter, on or about April 30, 1988, respondent advised Mr. Hassan that his petition had been approved and that it had been sent to Lima, Peru.

18. On or about September 15, 1989, respondent and Mr. Hassan were advised that the American consulate in Peru had not received Mr. Hassan's petition. Upon learning this, Mr. Hassan met with respondent in his office and asked for an explanation. During the course of this meeting, respondent cursed Mr. Hassan, physically shoved Mr. Hassan out of his office, questioned the validity of his marriage to Mrs. Hassan and stated that the INS would not approve the petition. Respondent also threatened to call the INS and report that the Hassans' marriage was fraudulent.

19. The Hassans retained new counsel, Marjorie A. Lesch, Esq. ("Lesch"). On or about September 15, 1989 Lesch wrote to respondent advising him that she had been retained by the Hassans in connection with Mr. Hassan's application for permanent residency and requested that respondent forward the Hassan file to her office. The letter was countersigned by Mr. and Mrs. Hassan.

20. Following receipt of Lesch's letter, on September 27, 1989 respondent wrote directly to Mrs. Hassan, addressing her by her maiden name. In the letter, respondent stated that his obligation to her was "more" than his obligation to her husband, made reference to the INS warning of criminal prosecution when family relationships are falsified to obtain visas, and wrote that the behavior of her husband is " . . . unexplained. He flatly stated that he does what he pleases and goes with any woman he likes."

21. On or about October 7, 1989, respondent wrote to Lesch enclosing a copy of his September 27, 1989 letter to Mrs. Hassan. In his letter, respondent told Lesch that if she would send him certain INS documentation he would have the petition approved, whereupon Lesch could file the required forms in Lima, Peru. Later in the letter respondent questioned the genuineness of Mr. Hassan's signature on her letter of September 15, 1989, questioned Lesch about her connection with Mrs. Hassan and asked whether Lesch knew the name, address and employment of a woman Mr. Hassan brought to respondent's office. Respondent then stated "I think a prompt answer is for your own protection. . . . " Finally, respondent asked

Lesch to remit the balance of his fee to insure the release of the Hassans' papers to her.

22. Lesch answered respondent's letter on October 17, 1989, reiterating that the Hassans wanted her to represent them, and again asking that respondent forward the Hassans' documents and INS correspondence to her. Respondent did not forward any documents or file information to Lesch pursuant to her demand and has not done so to date.

23. On or about October 10, 1989, respondent wrote and delivered, or caused to be delivered, a note addressed to "Mr. Sherif Omar, the Ambassador and Egypt's Consulate General in New York." In a memorandum which accompanied the note, respondent asked that the Consulate refuse Mr. Hassan a new passport or withdraw any passport that had been issued to Mr. Hassan and recommended that Mr. Hassan be issued travel documents to Egypt only because he is avoiding conscription in Egypt. The note further alleged that Mr. Hassan had committed a fraud at the INS and was currently under investigation. Additionally, respondent expressed his opinion that the Hassans' marriage was a sham marriage, that Mr. Hassan probably committed forgery when he applied for a passport for Peru and that Mr. Hassan visited respondent at his office in the company of a woman who was not his wife and falsely claimed that she was his wife's friend. Respondent closed with a request that the Consulate obtain copies of Mr. Hassan's application to the American Consulate in Cairo because Mr. Hassan might have a wife in Egypt.

24. Mr. Hassan complained to the Committee about respondent in September 1989. On or about October 23, 1989, respondent wrote to Lesch stating, among other things, that Lesch will be held liable for Mr. Hassan's "false complaint" if respondent finds out that Lesch had anything to do with it and that respondent will lodge a complaint against Lesch.

25. Mr. Hassan was granted permanent residency in November 1990 after an extensive investigation by the INS.

C) Mamdouh M. ElDeeb

26. In or about December 1989, Mamdouh M. ElDeeb ("Mr. ElDeeb") and Bronx Lebanon Hospital Center ("Hospital") retained respondent to represent Mr. ElDeeb before the INS. The purpose of respondent's representation was to obtain permanent residency status for Mr. ElDeeb on the basis of his employment at the Hospital.

27. Mr. ElDeeb signed a retainer agreement with respondent which called for payment of $750.00 in advance, $500.00 upon approval of the application and $500.00 upon the INS interview for adjustment, plus filing fees. Mr. ElDeeb paid respondent $800.00 upon signing the retainer.

28. At the time Mr. ElDeeb retained respondent, Mr. ElDeeb had already obtained permission for a temporary stay in the U.S. At respondent's request, Mr. ElDeeb prepared his own application to extend the period of his temporary stay. Respondent instructed Mr. ElDeeb to file

an application for an extension of his stay at the INS headquarters in New York City.

29. On or about May 18, 1990 Marilyn Rosenthal, Esq. ("Rosenthal") wrote to respondent to inform him that Mr. ElDeeb had decided to discharge respondent and that she had been retained to represent Mr. ElDeeb. Rosenthal asked respondent to forward Mr. ElDeeb's file to her and enclosed a signed authorization from Mr. ElDeeb.

30. Upon receipt of the above letter, respondent wrote to Rosenthal on May 20, 1990 stating that when he received his fee of $1,085.00 he would forward Mr. ElDeeb's file. Respondent further stated that if payment was not received he would sue Mr. ElDeeb and notify the Hospital. Respondent did not forward Mr. ElDeeb's file or file information to Rosenthal and has not done so to date.

31. On or about May 23, 1990, Mr. ElDeeb wrote to respondent, expressed his dissatisfaction with respondent's representation and respondent's ethics, and asked for the return of his money and his file, and advised him that he would complain to the Committee.

32. In complete disregard of Mr. ElDeeb's and Rosenthal's letters, on or about May 26, 1990 respondent filed Mr. ElDeeb's petition for labor certification with the INS.

33. Thereafter, on or about May 31, 1990, respondent wrote a letter to Denise Corvino, Employment Specialist at the Hospital, telling her that Mr. ElDeeb owed his money for legal services. Respondent's letter also stated that Mr. ElDeeb might be subject to deportation for overstaying his visa and for unauthorized employment

and that Mr. ElDeeb had failed to file his authorization papers in New Jersey, the proper office. He further indicated that because Mr. ElDeeb had not followed respondent's advice he would not be eligible to adjust his status and would have to go to Egypt. Finally, he stated that he might sue Mr. ElDeeb for libel and slander and that the Hospital would be liable since Mr. ElDeeb used the Hospital's stationary in correspondence with respondent.

34. Mr. ElDeeb complained to the Committee about respondent in June 1990.

35. In or about September 1990 respondent commenced a civil suit against Mr. ElDeeb in Bronx County Civil Court for legal fees in the amount of $1,085.00 plus counsel fees. Rosenthal appeared for Mr. ElDeeb and counterclaimed for the return of $562.50 plus counsel fees.

36. Two months later, on or about November 9, 1990, respondent moved for summary judgment and for sanctions against Mr. ElDeeb and Rosenthal on the grounds that the defense and counterclaim were frivolous. In an affirmation that respondent filed in support of his motion, he falsely claimed, among other things, that Mr. ElDeeb had filed a complaint with this Committee that Mr. ElDeeb realized was frivolous, that Mr. ElDeeb failed to submit to conciliation in connection with his complaint to the Committee, and that Mr. ElDeeb had abandoned his complaint. He further affirmed that the attorney who "fraudulently" took over Mr. ElDeeb's immigration case (Rosenthal) "fraudulently" urged Mr. ElDeeb to file his complaint against respondent, that she

had advised Mr. ElDeeb not to proceed with mediation and that she had abused the disciplinary process.

37. Mr. ElDeeb opposed respondent's motion and asked for sanctions against him for his erroneous representations to the Court.

38. On March 25, 1991 Judge Lorraine Backal denied respondent's motion for summary judgment and reserved decision on the issue of sanctions. After a hearing on September 27, 1991 Civil Court Arbitrator Irwin M. Echtman decided the matter in favor of Mr. ElDeeb on the grounds that respondent had no cause of action, but imposed no sanctions on either attorney.

D) Sydney Lanier Fortner and Samir Kahwaji

39. On or about August 6, 1982 Samir Kahwaji ("Mr. Kahwaji") retained respondent in order to obtain permanent residency for Mr. Kahwaji on the basis of political asylum. At respondent's suggestion and insistence, Mr. Kahwaji falsely stated that he was a member of the Moslem Brotherhood in his petition for political asylum. Thereafter, in or about April 1985, following Mr. Kahwaji's marriage to Sydney Lanier Fortner ("Ms. Fortner"), Ms. Fortner and Mr. Kahwaji retained respondent to file a petition for a visa for Mr. Kahwaji based upon their marriage. On or about May 10, 1985 respondent prepared but did not properly file a marriage petition and submitted a notice of appearance as attorney for both Ms. Fortner and Mr. Kahwaji with the INS.

40. During the same month, May 1985, Ms. Fortner and Mr. Kahwaji met with respondent and, at his request,

gave him original documents, including birth certificates and their marriage license.

41. From time to time following their meeting with respondent Ms. Fortner and Mr. Kahwaji requested status reports as to their petition. Respondent failed to respond to their requests except to say that the marriage petition had been filed.

42. Approximately two years after their initial meetings with respondent, in March 1987, Ms. Fortner and Mr. Kahwaji met with respondent in his office. During this meeting respondent refused to answer Ms. Fortner's questions, spoke exclusively to Mr. Kahwaji in Arabic (which language Ms. Fortner does not speak), advised Mr. Kahwaji that Ms. Fortner was trying to ruin Mr. Kahwaji's life, refused to return their original documents or give them copies of papers respondent filed with the INS (after being requested to do so), falsely advised them that the marriage petition had been denied because Ms. Fortner was using her maiden name, stated that Ms. Fortner would be prosecuted for having a fraudulent marriage, ordered them out of his office and threatened to call the police. He also advised them that he had applied to the INS for Mr. Kahwaji under the legalization program.

43. In the wake of this meeting, on April 8, 1987 Ms. Fortner and Mr. Kahwaji wrote to respondent advising him that he was discharged as their attorney and asking him to return their original documents immediately. To date, respondent has not returned Ms. Fortner's and Mr. Kahwaji's original documents.

44. On April 20, 1987 Ms. Fortner wrote to respondent again, notifying him that he was to cease and desist from any further action on their behalf. She further advised him of the name and address of their new attorney, Michael Feiner, Esq. ("Feiner"), and requested that respondent forward all papers to Feiner.

45. Respondent wrote to Mr. Kahwaji on April 20, 1987 and advised him that he would be deported, that his application on the basis of the marriage would be denied, that he had asked Mr. Kahwaji to keep his wife out of the case, and that if Mr. Kahwaji did not appear at respondent's office without his wife he would be arrested and deported. Respondent also falsely advised Mr. Kahwaji that he would forfeit his opportunity to apply under the legalization program unless he complied with respondent's demands and advised Mr. Kahwaji that he would have to sign a new retainer.

46. Notwithstanding the foregoing events and his clients' express dismissal of him as their attorney, on May 18, 1987 respondent wrote to Mr. Kahwaji advising that his case had been scheduled under the legalization program and that Mr. Kahwaji had failed to appear. In the same letter respondent asked Mr. Kahwaji to gather certain documents and advised him that he would reschedule Mr. Kahwaji's case. He also claimed that Mr. Kahwaji's new lawyers "agree" with him on this matter.

47. Disregarding Mr. Kahwaji's instructions, respondent continued to hold himself out as Mr. Kahwaji's attorney. Thus, on or about April 13, 1987 and June 12, 1987, respondent submitted letters to the INS purporting to be on Mr. Kahwaji's behalf. In his June 12, 1987 letter,

respondent advised the INS that it is necessary to reschedule Mr. Kahwaji's deportation hearing. Again, on December 4, 1987, respondent caused a letter to be sent to the Director of the Legalization Office of the INS regarding Mr. Kahwaji. In this letter, respondent advised the Director that another representative of Mr. Kahwaji had applied for legalization, that the reason for the application was that respondent had confronted Mr. Kahwaji and Ms. Fortner as to the validity of their marriage, that Mr. Kahwaji had a prior arrest in Maryland and that Kahwaji had stated in his petition for political asylum that he was a member of Muslim Brotherhood, which respondent characterized as a subversive and terrorist organization close to Islamic fundamentalists in Iran.

F) Nawal Al Omari

48. Nawal Al Omari ("Mrs. Al Omari") retained respondent in or about June 1988 to represent her as administratrix of her husband's estate. Respondent prepared a petition to the Surrogate's Court to have Mrs. Al Omari appointed administratrix which was granted in January 1989.

49. In September 1990, Mrs. Al Omari notified respondent that she wished to discharge him. Her new counsel, Ivan L. Van Leer ("Van Leer"), forwarded duly executed consent forms to that effect to respondent and requested that respondent forward all pertinent papers to him.

50. Respondent subsequently wrote a reply to Van Leer refusing to be substituted, accusing Mrs. Al Omari's relatives of a conspiracy to have him substituted and demanding to know who paid Van Leer's fee.

51. In October 1990 respondent prepared and served a "notice of attorney's lien" on Mrs. Al Omari and her tenant, Faris and Naples Grocery, 456 South Broadway, Yonkers, New York, demanding that all rents be paid to respondent as attorney for Mrs. Al Omari. The notice also stated that his "fee by Surrogate Court is $9,500.00."

52. Contrary to the terms of the notice of attorney's lien, Mrs. Al Omari never authorized respondent to claim a lien for his fee, nor was respondent's fee approved by the Surrogate's Court. Respondent rendered no legal services to Mrs. Al Omari regarding her right to receive rent from her tenant.

53. Even though Mrs. Al Omari had retained new counsel, respondent wrote directly to her in November 1990, again refusing to be substituted, demanding his fee, threatening to execute on her house, stating that she may be subject to criminal investigation, predicting that the INS would contact her, advising her that she will lose her citizenship because her second husband is a bigamist, accusing her of trying to shield criminals and asking her to call him.

54. In January 1991 Van Leer made a motion in Surrogate's Court to be substituted for respondent as Mrs. Al Omari's counsel. Respondent opposed Van Leer's motion and affirmed to the Surrogate's Court that Van

Leer intends to destroy Mrs. Al Omari's "solid case" and obstruct justice, among other things.

55. Without Mrs. Al Omari's consent, respondent then moved in April 1991 to have the Public Administrator, with himself as its counsel, assume the administration of the estate and to remove Mrs. Al Omari as administratrix. In his affirmation in support of the motion respondent stated that Mrs. Al Omari had failed to carry out her duties as administratrix and that she had failed to pay respondent his fees.

56. Surrogate Albert J. Emanuelli denied respondent's motion on April 25, 1991 stating, inter alia, that by pursuing an application to remove Mrs. Al Omari as administrratrix while resisting the efforts of other counsel to replace him as Mrs. Al Omari's counsel, respondent had engaged in an obvious conflict of interest. Respondent is appealing this decision.

57. On May 23, 1991, Surrogate Emanuelli granted Van Leer's motion to be substituted as Mrs. Al Omari's attorney.

CHARGE ONE

58. By making false and misleading statements to his clients and to third parties about his clients, as alleged in paragraphs 12, 13, 14, 18, 23, 33, 41, 42, 45, 46, 47, 51, 52, 53, respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-101(A)(4) of the Code.

CHARGE TWO

59. By making false and misleading statements and about his clients to third parties, as alleged in paragraphs 14, 23, 33, 47 and 63, respondent intentionally and recklessly prejudiced or damaged his clients during the course of a professional relationship in violation of DR 7-101(A)(3) of the Code.

CHARGE THREE

60. By knowingly revealing his clients' confidences or secrets to other clients or third parties to his clients' disadvantage, as alleged in paragraphs 14, 23, 33 and 47, respondent violated DR 4-101(B)(1) and (2) of the Code.

CHARGE FOUR

61. By refusing or failing to file, pursue and complete petitions and applications for his clients and by failing to communicate with his clients as alleged in paragraphs 5 through 10, 26, 27, 28, 32, 39, 41 and 42, respondent neglected matters entrusted to his care in violation of DR 6-101(A)(3) of the Code.

CHARGE FIVE

62. By improperly refusing to withdraw after being discharged, as set forth in paragraphs 11, 12, 13, 19, 20, 21, 22, 29, 30, 31, 32, 43, 50, 53, 54 and 56, respondent failed to withdraw from employment in violation of DR 2-110(B)(4) of the Code.

CHARGE SIX

63. By failing to cooperate with and by attempting to interfere with his former clients' new representation as alleged in paragraphs 11, 12, 13, 19, 20, 21, 22, 29, 30, 31, 32, 43, 44, 45, 46, 47, 49, 50, 53, 54 and 56, respondent failed to withdraw properly from employment in violation of DR 2-110(A)(2) of the Code.

CHARGE SEVEN

64. By threatening a client and a client's new counsel with adverse action if he or she complained to the Committee, as alleged in paragraphs 24, and 33, respondent engaged in conduct that is prejudicial to the administration of justice in violation of DR 1-102(A)(5) of the Code.

CHARGE EIGHT

65. By falsely and recklessly affirming matters to the Civil Court and Surrogate's Court, as alleged in paragraphs 36 and 54, respondent stated or alluded to matters that he had no reasonable basis to believe were relevant to the case or supported by admissible evidence in violation of DR 7-106(C)(1) of the Code.

CHARGE NINE

66. By failing promptly to return clients' property despite due demand, as alleged in paragraphs 7, 11, 40, 42 and 43, respondent failed promptly to deliver property in his possession which his clients were entitled to receive, in violation of DR 9-102(B)(4) of the Code.

CHARGE TEN

67. By advocating a position in a matter which was materially adverse to the interests of a former client in the same matter, as alleged in paragraphs 48 through 57, respondent violated DR 5-108(a)(1) of the Code after the 1990 Amendments.

CHARGE ELEVEN

68. By threatening his clients and their new attorneys with adverse action and by physically and verbally abusing his clients as alleged in paragraphs 10, 12, 13, 18, 20, 21, 30, 42, 45 and 53, and by engaging in the conduct alleged in paragraphs 5 through 57, respondent engaged in conduct that reflects adversely on his fitness to practice law in violation of DR 1-102(A)(6) and DR 1-102(A)(7) of the Code after the 1990 Amendments.

69. Respondent knew or should have known in committing the acts set forth above that he was guilty of professional misconduct within the meaning of §603.2 of the rules governing the conduct of attorneys of the Appellate Division, First Judicial Department.

WHEREFORE, a hearing shall be held upon the within charges before the designated panel and upon the conclusion hereof, the hearing panel shall take such action as it deems appropriate pursuant to 22 N.Y.C.R.R. §605.14.

Dated: New York, New York
February 28, 1992

/s/ Hal R. Lieberman
HAL R. LIEBERMAN
Departmental Disciplinary
Committee
First Judicial Department
41 Madison Avenue
New York, New York 10010
(212) 685-1000

MADY J. EDELSTEIN
of Counsel

APPENDIX F

22 NYCRR § 605.22(c)

§ 605.22 Hearing Panels

(c) Quorum and Manner of Acting. All matters presented to a hearing panel shall be determined by three members of the panel. Two panel members assigned to a matter shall constitute a quorum for the transaction of business. All action shall require the concurrence of at least two members. At least two members of a hearing panel assigned to a matter shall have heard the entire proceeding. The third assigned member either shall have heard the entire proceeding before the hearing panel or shall have read the transcript of that portion (which may be all) of the proceeding not heard. In the event that one of the three members assigned to a matter dies, becomes incapacitated, or is otherwise unable to determine a matter, the fourth member shall take his or her place. If the fourth member dies, becomes incapacitated, or is otherwise unable to serve, the chairperson may designate another member of the Committee to serve in his or her place.

APPENDIX G

22 NYCRR § 603.4(a)(1)

§ 603.4 Appointment of Disciplinary Agencies: Commencement of Investigation of Attorney Misconduct; Complaints; Procedure in Certain Cases

(a)(1) This Court shall appoint a Departmental Disciplinary Committee for the Judicial Department, which shall be charged with the duty and empowered to investigate and prosecute matters involving alleged misconduct by attorneys to whom this Part shall apply, and to impose discipline to the extent permitted by section 603.9 of this Part. This court shall, in consultation with the Departmental Disciplinary Committee, appoint a chief counsel to such committee and such assistant counsel, special counsel and supporting staff as it deems necessary.

APPENDIX H

22 NYCRR § 603.4(a)(2)

§ 603.4 Appointment of Disciplinary Agencies: Commencement of Investigation of Attorney Misconduct; Complaints; Procedure in Certain Cases

(a)(2) The membership of the Departmental Disciplinary Committee shall be a total of not more than 44 persons each of whom shall be appointed by this Court for a term of three years, except members who have been appointed to complete unexpired terms, in which case such members may be reappointed for three-year or shorter terms. At least two-thirds of the members of the Departmental Disciplinary Committee shall be members of the bar of the state of New York in good standing, each of whom shall reside or have an office in the city of New York, and up to one-third of such members shall be persons who are not members of the bar, each of whom shall reside or have a principal place of business in the City of New York. Appointments to the Departmental Disciplinary Committee may be made from lists of nominees submitted by the Association of the Bar of the City of New York, the New York County Lawyers' Association, and the Bronx County Bar Association, and by such other means which the Court deems in the public interest. A member of the bar who has served two consecutive terms shall not be eligible for reappointment until one year after the expiration of the second term. The appropriate committees of the Association of the Bar of the City of New York, the New York County Lawyers' Association, and the Bronx County Bar Association may be designated to investigate and prosecute matters involving

alleged misconduct of attorneys. Upon such designation, references in sections 603.3, 603.4(a)(3), (b), (c) and (d), 603.5, 603.6, 603.9, 603.11, 603.12(a) and (e), 603.15 and 603.16 of the rules of this Court to the Departmental Disciplinary Committee with respect to the matter or matters to which such designation applies shall mean the Committee of the Association of the Bar of the City of New York, the New York County Lawyers' Association or the Bronx County Bar Association so designated.